

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CURTIS NEAL WELLS, )  
Petitioner, ) CASE NO. C05-0988-TSZ-MAT  
v. )  
ROBERT MCKENNA, ) ORDER FOR SERVICE  
Respondent. )

Petitioner is a Washington state prisoner who has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt. #1). On June 7, 2005, the court ordered petitioner to show cause why his petition should not be dismissed for failure to exhaust his state court remedies. (Dkt. #3). On June 29, 2005, petitioner filed a response. (Dkt. #4). Having reviewed the response and the balance of the record, the court does hereby find and ORDER as follows:

(1) Petitioner's response, although difficult to decipher, appears to state that his appellate attorney refused to raise certain claims in state court which petitioner now seeks to raise here. (Dkt. #4 at 2). The court will defer addressing whether this allegation, if true, is sufficient to satisfy the exhaustion requirement, until after respondent has filed his Answer. Accordingly, the Clerk shall arrange for service by certified mail upon respondent and upon the Attorney General of the State of Washington, of copies of the petition, of all documents in support thereof, and of this Order. The Clerk shall also send a copy of this Order and the General Order to petitioner.

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1           (2) Within **forty-five days** after such service, respondent shall file and serve an  
2 Answer in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States  
3 District Courts. As part of the Answer, respondent shall state (a) whether petitioner has  
4 exhausted available state remedies, (b) whether there is any issue of abuse or delay under Rule 9,  
5 (c) whether an evidentiary hearing is necessary, and (d) whether the petition is timely.  
6 Respondent shall not file a dispositive motion in place of an Answer without first showing cause  
7 as to why an Answer is inadequate.

8           (3) The Answer will be treated in accordance with Local Rule CR 7. **Accordingly, on**  
9 **the face of the Answer, respondent shall note the Answer for consideration on the fourth**  
10 **Friday after filing.** Petitioner may file and serve a Response no later than the Monday  
11 immediately preceding the Friday designated for consideration of the matter, and respondent may  
12 file and serve a Reply no later than the Thursday immediately preceding the designated Friday.

13           (4) Respondent shall file the Answer and a copy thereof with the Clerk of Court, and  
14 serve a copy of all documents upon petitioner.

15           DATED this 30th day of June, 2005.

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18           Mary Alice Theiler  
United States Magistrate Judge  
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